No. 01-1870

(3)

Supreme Court U.S.
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In The
Supreme Court of the United States

ADRIENNE COBB, EDDIE OLIVER, TOMMY PERKINS, AND NATHALAN PERKINS,

Petitioners,

versus

ROBERT ROSHTO, RAYMOND E. HOLLOWAY, TERRY E. PITRE, MURPHY J. PAINTER, SAM GARAFOLA, UNKNOWN AIMEE, Agent, JEFF WESLEY, SCOTT JONES, and the CITY OF DENHAM SPRINGS, LOUISIANA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RICHARD P. IEYOUB
Attorney General
STATE OF LOUISIANA

ROBERT E. HARROUN, III
Deputy Attorney General
Litigation Division

LOUISIANA DEPARTMENT OF JUSTICE
Litigation Division
P.O. Box 91279
Baton Rouge, LA 70821-1279
(225) 342-1075

LINDA LAW CLARK*
Special Assistant Attorney General
DECUIR & CLARK, L.L.P.
1961 Government St.
Baton Rouge, LA 70806
(225) 346-8716

ROSE POLITO WOODEN
Assistant Attorney General

Counsel for Respondents
**Counsel of Record*

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QUESTION PRESENTED

I. May a federal court abuse its discretion in declining to exercise its jurisdiction pursuant to 28 U.S.C. §1367?

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent Robert Roshto respectfully prays and herein appears to argue that a writ of certiorari should be denied in reviewing a judgment by the United States Court of Appeals for the Fifth Circuit in this case.

STATEMENT OF THE CASE

Relevant Proceedings Below

The case in chief was filed on July 9, 1998, in the Middle District Court, State of Louisiana before Judge Frank Polozola. That matter was realloted to Judge Ralph Tyson on August 10, 1998 and then reassigned but maintained in the Middle District to be handled by Judge Peter H. Beer of the Eastern District.

Each of the named defendants, through counsel, filed summary judgment motions. Defendant Robert Roshto filed a motion for summary judgment on the basis of prescription of claims or, in the alternative, qualified immunity. The District Court rendered a decision on July 10, 2000, granting summary judgment to Robert Roshto on the basis of prescription. The court then proceeded to address the remaining defendants' summary judgment motions, granting in part and denying in part the motions for dismissal. The court, pursuant to the discretionary rights granted to it through 28 U.S.C. § 1367, declined to exercise supplemental jurisdiction over all remaining claims, stating the remaining State claims predominated substantially over the remaining federal claims.

The United States Fifth Circuit Court of Appeals on March 26, 2002, docket number 00-31008, affirmed in part and reversed in part the District Court's judgment in this matter.

The Fifth Circuit reversed the summary judgment based upon prescription previously granted to Robert Roshto, stating that the state court proceedings did not appear to support the District Court's finding that the case was dismissed in state court by an exception of improper accumulation.

The Fifth Circuit addressed the remaining defendants' claims, affirming the District Court decision. Mr. Roshto was formally dismissed prior to the District Court examination of the qualified immunity claims and was therefore not a party to that judgment.

The Fifth Circuit affirmed the District Court's discretionary decision to remand all remaining claims to the State court, recognizing the discretion when such claims substantially predominate over federal claims. In that decision, the Court specifically noted the Roshto claims were back in the Federal Court prior to declining federal jurisdiction to hear the remaining claims. Petitioners filed for writ of certiorari of this court raising four issues. Question Number One – the discretionary authority to decline jurisdiction over remaining claims is the sole issue directly affecting Respondent Roshto, due to his dismissal on the basis of prescription prior to summary judgment evaluation on qualified immunity.

Relevant Facts

Respondent Robert Roshto was an employee and official of the Department of Public Safety & Corrections, Office of Alcoholic Beverage Control, which is an arm of the State of Louisiana. He is now retired. He served in the position as Deputy Counsel for the State Agency during the Administrative and court proceedings identified in the complaint. The dispute forming the basis of this action is petitioners' successive application for a liquor permit for its area business. There was an eventual granting of the license.

REASONS FOR DENYING THE PETITION

I. The Court of Appeals Correctly Upheld the District Court's Discretionary Right Granted Pursuant to 28 U.S.C. § 1367.

Petitioners seek this Court's reversal of the Fifth Circuit Court of Appeal's sustaining the discretionary powers of the district court and the right by law to assert such powers when the issues of state law substantially predominate in a case. The Fifth Circuit committed no reversible error in its affirmation of the District Court's exercise of such jurisdictional rights and the District Court has such discretion by law.

28 U.S.C. § 1367 provides the federal court has jurisdiction over supplemental matters which, in its discretion, may be accepted and consolidated with federal issues before it. As cited by the Fifth Circuit, *Bass vs. Parkwood Hospital*, 180 F.3d 234 (5th Cir. 1999) correctly identifies and provides a district court may decline to exercise supplemental jurisdiction over state law claims if they

substantially predominate over federal claims. The Fifth Circuit specifically noted in their decision that, "Taking into account our reversal of summary judgment for Roshto, the dozen or more state laws nevertheless continue to 'substantially predominate' in number, variety and complexity. The court did not abuse its discretion."

The Fifth Circuit's decision acknowledges and recognizes that the state law issues predominate, even when Roshto's motion for summary judgment previously granted on prescription alone is set aside.

Respondent also notes to this Court, previously raised in District Court, that respondent Robert Roshto is an official employee of the Department of Public Safety and Corrections, an arm of the State of Louisiana. As such, this particular defendant, in his official capacity is entitled to and afforded the protections of the Eleventh Amendment of the United States Constitution. Roshto when named in his personal capacity would also be entitled to qualified immunity, raised in his summary judgment motion but not reached by the Court.

The Eleventh Amendment bars monetary judgments against a sovereign state, absent consent or specific authorization by Congress given within its authority to so render. *Kimel, et al. vs. Florida Board of Regents, et al.*, Nos. 98-791, 98-792, 120 S.Ct. 631 (1/11/00). Any and all claims for monetary damages, in this case based on state rules, regulations, administrative procedures, etc., would be outside the jurisdiction of the federal court, further supporting the exercise of the court's discretionary rights to direct all parties to the state court in this proceeding.

Absent state consent, the Eleventh Amendment clearly bars pendent state claims. *See, Cantu vs. Rocha*, 77

F.3d 795 (5th Cir. 1996) and *Vermet vs. Howell*, 606 F.Supp. 732 (W.D. MI. 1994), wherein the court has acknowledged plaintiff's filing discrimination actions could not raise pendent claims arising under state civil rights laws. *See also, Raygor and Goodchild vs. Regents of the University of Minnesota*, 00-1514, 122 S.Ct. 999, 534 U.S. 533, 152 L.Ed. 2d 27 (decided 2/27/02), in which the court noted the grant of jurisdiction over supplemental and pendent claims does not extend to claims against non-consenting state defendants.

The District Court is afforded full discretion in determining whether to decline supplemental jurisdiction. This District Court did so, indicating that the non-federal issues are substantially disproportionate to the federal issues remaining. The Fifth Circuit, while upsetting one of the summary judgments against one of the defendants, stated the District Court properly exercised that discretion. That decision must be upheld and writ request denied.

Defendant Robert Roshto reiterates his sovereign state classification in fact removes jurisdiction of some of the remaining federal and state claims in the District Court, thereby further supporting the District Court and Fifth Circuit Court of Appeals' decisions.

CONCLUSION

The issue raised by petitioners does not merit consideration. The United States Court of Appeals for the Fifth Circuit properly upheld the District Court's determination to decline jurisdiction, based on their discretionary right, over the remaining matters pursuant to 28 U.S.C. § 1367.

Respondent's failure to address Questions 2, 3 and 4 do not herein indicate agreement with the issues presented and argued by petitioners. All other matters were ruled upon subsequent to Roshto's dismissal from this case and do not directly apply at this time. Petitioners' Petition for Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD P. IEYOUB
Attorney General
STATE OF LOUISIANA

ROBERT E. HARROUN, III
Deputy Attorney General
Litigation Division

LOUISIANA DEPARTMENT OF JUSTICE
Litigation Division
P.O. Box 91279
Baton Rouge, LA 70821-1279
(225) 342-1075

LINDA LAW CLARK*
Special Assistant Attorney General
DECUIR & CLARK, L.L.P.
1961 Government St.
Baton Rouge, LA 70806
(225) 346-8716

ROSE POLITO WOODEN
Assistant Attorney General

Counsel for Respondents
**Counsel of Record*